

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 129**

4 (By Senators Palumbo, McCabe, Beach and Green)

5 \_\_\_\_\_  
6 [Originating in the Committee on Transportation and  
7 Infrastructure; reported February 20, 2013.]  
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9  
10 A BILL to amend and reenact §17C-15-49 of the Code of West  
11 Virginia, 1931, as amended, relating to making the offense of  
12 failure to wear safety belts a primary offense; requiring all  
13 passengers in the back seat to be restrained by a safety belt  
14 or child passenger safety device system; limiting an exception  
15 for mail carriers to operators; broadening an exception  
16 regarding physical disability; and specifying the fine amount.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §17C-15-49 of the Code of West Virginia, 1931, as  
19 amended, be amended and reenacted to read as follows:

20 **ARTICLE 15. EQUIPMENT.**

21 **§17C-15-49. Operation of vehicles with safety belts; exception;**  
22 **penalty; civil actions; educational program by**  
23 **West Virginia State Police.**

24 (a) Effective September 1, ~~one thousand nine hundred ninety-~~

1 ~~three~~ 2013, a person may not operate a passenger vehicle on a  
2 public street or highway of this state unless the person, any  
3 passenger in the back seat ~~under eighteen years of age~~ and any  
4 passenger in the front seat of ~~such~~ the passenger vehicle is  
5 restrained by a safety belt or child passenger safety device system  
6 meeting applicable federal motor vehicle safety standards. For the  
7 purposes of this section, the term "passenger vehicle" means a  
8 motor vehicle which is designed for transporting ten passengers or  
9 less, including the driver, except that ~~such~~ the term does not  
10 include a motorcycle, a trailer or any motor vehicle which is not  
11 required on the date of the enactment of this section under a  
12 federal motor vehicle safety standard to be equipped with a belt  
13 system. The provisions of this section ~~shall~~ apply to all  
14 passenger vehicles manufactured after January 1, 1967, and being  
15 1968 models and newer.

16 (b) The required use of safety belts as provided ~~herein~~ in  
17 this section does not apply to an operator who is a duly appointed  
18 or contracted rural mail carrier of the United States Postal  
19 Service who is actually making mail deliveries or to a passenger or  
20 operator with a ~~physically disabling~~ medical condition ~~whose~~  
21 ~~physical disability~~ that would prevent appropriate restraint ~~in~~  
22 ~~such~~ with the safety belt or child passenger safety device system  
23 if the condition is duly certified by a physician who ~~shall state~~  
24 states the nature of the ~~disability~~ medical condition as well as

1 the reason ~~such~~ the restraint is inappropriate. The Division of  
2 Motor Vehicles shall ~~adopt~~ propose rules for legislative approval,  
3 in accordance with the provisions of chapter twenty-nine-a of this  
4 code, to establish a method to certify the physical disability and  
5 to require use of an alternative restraint system where feasible or  
6 to waive the requirement for the use of any restraint system.

7 (c) Any person who violates the provisions of this section  
8 shall be fined ~~not more than twenty-five~~ \$25. ~~No court costs or~~  
9 ~~other fees shall~~ Court costs or other fees may not be assessed for  
10 a violation of this section. ~~Enforcement of this section shall be~~  
11 ~~accomplished only as a secondary action when a driver of a~~  
12 ~~passenger vehicle has been detained for probable cause of violating~~  
13 ~~another section of this code.~~

14 (d) A violation of this section is not admissible as evidence  
15 of negligence or contributory negligence or comparative negligence  
16 in any civil action or proceeding for damages and ~~shall~~ is not be  
17 admissible in mitigation of damages: *Provided,* That the court may,  
18 upon motion of the defendant, conduct an in camera hearing to  
19 determine whether an injured party's failure to wear a safety belt  
20 was a proximate cause of the injuries complained of. Upon ~~such~~ a  
21 finding by the court, the court may then, in a jury trial, by  
22 special interrogatory to the jury, determine: (1) That the injured  
23 party failed to wear a safety belt; and (2) that the failure to  
24 wear the safety belt constituted a failure to mitigate damages.

1 The trier of fact may reduce the injured party's recovery for  
2 medical damages by an amount not to exceed five percent ~~thereof~~ of  
3 the medical damages. In the event the plaintiff stipulates to the  
4 reduction of five percent of medical damages, the court shall make  
5 the calculations and the issue of mitigation of damages for failure  
6 to wear a safety belt ~~shall~~ may not be presented to the jury. In  
7 all cases, the actual computation of the dollar amount reduction  
8 shall be determined by the court.

9 (e) Notwithstanding any other provision of this code to the  
10 contrary, no points may be entered on any driver's record  
11 maintained by the Division of Motor Vehicles as a result of a  
12 violation of this section.

13 (f) ~~Commencing the first day of July, one thousand nine~~  
14 ~~hundred ninety-three~~ The Governor's Highway Safety Program, in  
15 cooperation with the ~~division of public safety~~ West Virginia State  
16 Police and any other state departments or agencies and with county  
17 and municipal law-enforcement agencies, shall initiate and conduct  
18 an educational program designed to encourage compliance with safety  
19 belt usage laws. This program shall be focused on the effectiveness  
20 of safety belts, the monetary savings and the other benefits to the  
21 public from usage of safety belts and the requirements and  
22 penalties specified in this law.

23 (g) Nothing contained in this section ~~shall be construed to~~  
24 ~~abrogate or alter~~ abrogates or alters the provisions of section

1 forty-six of this article relating to the mandatory use of child  
2 passenger safety devices.

NOTE: The purpose of this bill is to change the offense of failure to wear a safety belt to a primary offense, to require that all passengers regardless of age be restrained by a seat belt or child passenger safety device system, to limit an exception for mail carriers to operators, to broaden a physical disability exception to any medical condition, and to specify the fine amount in order to comply with grant criteria requirements for federal highway safety grants.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.